

TITLE 560 INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

Emergency Rule

LSA Document #_____ (E)

DIGEST

Temporarily adds provisions to explain and implement the compliance review of collective bargaining agreements between school employers and the exclusive representatives as required by IC 20-29-6-6.1. Authority: IC 20-29-6-6.1. Effective August 1, 2015.

SECTION 1. The board shall do the following:

- (1) Develop a rubric for use in reviewing a collective bargaining agreement (CBA) to determine its compliance with IC 20-29-6.
- (2) Publish the rubric on the board's website no later than July 1, 2015.
- (3) Annually review and update the rubric as needed.
- (4) Publish any updated rubric on the board's website no later than July 1 each year thereafter.

SECTION 2. (a) Within two (2) business days of ratification by both parties, the school employer shall submit a copy of the ratified CBA (as defined in 560 IAC 2-1-2) to the board in the manner prescribed by the board.

(b) The board chair shall appoint a staff member or ad hoc panel member to serve as the compliance officer to review the CBA using the rubric described in SECTION 1 of this document.

SECTION 3. (a) The compliance officer may contact the school employer, the exclusive representative, or both to clarify or request additional information about the CBA or a Memorandum of Understanding (MOU).

(b) Upon completion of the review of a CBA, the compliance officer shall prepare a written Compliance Report and Recommendation (Report).

(c) Upon completion of the review of an MOU, the compliance officer shall prepare a written Addendum to the original Report.

(d) The Report or Addendum shall, as applicable:

- (1) identify and describe any and all noncompliant items; and
- (2) recommend the penalty for such noncompliance that may include one (1) or more of the following:
 - (A) Ordering the parties to cease and desist from all identified areas of noncompliance.
 - (B) Requiring the parties to obtain written approval from the board or board's agent prior to ratifying any subsequent CBA or MOU.
 - (C) Requiring any other action deemed appropriate by the compliance officer as authorized by state law.

SECTION 4. (a) Any MOU as defined in 560 IAC 2-1-2 is subject to review by a compliance officer pursuant to this document.

(b) Any MOU not timely submitted as required by this document constitutes a failure to submit a complete CBA and may result in a finding of noncompliance with a penalty of requiring board approval prior to ratifying any subsequent CBA or MOU.

(c) Any MOU ratified by the parties outside the bargaining timelines, except to the extent permitted by this SECTION, is noncompliant.

(d) Notwithstanding subsection (c), the following may constitute an exception to a finding of noncompliance for bargaining outside the allowable bargaining timelines:

(1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA.

(2) Non-rule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.

(e) Within two (2) business days of ratification of the MOU by both parties, the school employer shall submit a copy of the ratified MOU and a written explanation of the need for the MOU to the board in the manner prescribed by the board.

(f) Upon receipt of a ratified MOU, and to the extent practicable, the board chair shall appoint the original compliance officer to review the MOU.

(g) The compliance officer shall review the MOU and accompanying documentation to determine if an exception to a finding of noncompliance is warranted.

(h) The compliance officer shall issue an Addendum as described in SECTION 3.

SECTION 5. (a) The board or its agent will provide the parties with a copy of the compliance officer's Report or Addendum via email to each party's contact information on file with the board.

(b) Unless otherwise indicated in this document, all correspondence for CBA and MOU compliance reviews including approval or denial of approval to ratify as described in SECTION 8 of this document shall be via email. Receipt of an email will be presumed upon dispatch.

SECTION 6. (a) Parties have fifteen (15) days from the date the Report or Addendum is emailed to appeal:

(1) a finding of noncompliance;

(2) a recommended penalty; or

(3) both a finding of noncompliance and a recommended penalty.

(b) The appeal must:

(1) be in writing;

(2) state the basis of the appeal with reasonable particularity; and

(3) be filed with the board in the manner prescribed by the board.

(c) Upon the timely filing of an appeal, the board shall review the appeal and issue a final order.

(d) As part of its review, the board may:

(1) decide the appeal without briefs or oral argument;

(2) receive briefs from the parties;

(3) hear oral argument; or

(4) both receive briefs and hear oral argument.

(e) The board may stay impasse proceedings pending the board's final order in an appeal under this SECTION.

SECTION 7. (a) The board shall issue a final order within thirty (30) days of the later of:

- (1) The timely filing of an appeal.
- (2) Receipt of the last brief from the parties.
- (3) Conclusion of oral argument.

(b) In the event no timely appeal is filed, the compliance officer's Report or Addendum shall become the final order of the board.

SECTION 8. (a) If the final order of the board requires the parties to obtain written approval from the board or board's agent prior to ratifying any subsequent CBA or MOU, the following shall occur:

- (1) The board chair shall appoint a staff member or ad hoc panel member to serve as the compliance officer to review the tentatively agreed upon CBA or MOU.
 - (2) The written appointment shall:
 - (A) be made no later than August 1; and
 - (B) be provided to both the school employer and the exclusive representative.
 - (3) The school employer shall submit a copy of the tentatively agreed upon CBA or MOU to the compliance officer in the manner prescribed by the board.
 - (4) The compliance officer shall review the CBA or MOU and provide the parties with a written notice of approval or denial.
- (b) If the compliance officer issues a denial of approval to ratify, the notice shall identify the terms of the CBA or MOU that preclude the compliance officer's approval.
- (c) Absent a timely appeal and as soon as practicable, the parties shall correct the noncompliant terms and submit a new tentatively agreed upon CBA or MOU to the compliance officer for review in accordance with this SECTION.

(d) Parties have two (2) business days from the date the notice of denial is emailed to appeal the compliance officer's decision.

(e) The appeal must be in writing and describe, with reasonable particularity, the reason the identified terms of the CBA or MOU should be approved.

(f) Upon the timely filing of an appeal, the board shall make a determination and issue a final notice of approval or denial no later than thirty (30) days after receipt of the appeal.

(g) The board or its agent may stay impasse proceeding pending the board's final order in an appeal under this SECTION.

(h) Failure to obtain approval to ratify a CBA subjects the parties to impasse procedures pursuant to IC 20-29-6-13 unless impasse is otherwise stayed by the board or the board's agent.

(i) Any ratification of a subsequent CBA or MOU without the written approval of the board or the board's agent as required in this SECTION, shall be considered null and void, and the parties will proceed through impasse proceedings pursuant to IC 20-29-6-13 as applicable.

SECTION 9. Indiana Code 4-21.5 does not apply to the reviews under this document.